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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,036	10/11/2001	Paul Wingert	671.003US1	3735

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

EXAMINER

TRUONG, THANH K

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,036

Applicant(s)

WINGERT, PAUL

Examiner

Thanh K Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 and 37 is/are pending in the application.
- 4a) Of the above claim(s) 9-18, 25 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8, 19-24, 27-35 and 37 is/are rejected.
- 7) ☒ Claim(s) 5-7 is/are objected to.
- 8) ☒ Claim(s) 9-18, 25 and 26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-8, 19-24, 27-35 and 37, drawn to an agricultural bagger apparatus, classified in class 53, subclass 530.
 - II. Claims 9-18, 25 and 26, drawn to a method for improving the flow of agricultural feed in an agricultural feed stock bagging machine, classified in class 53, subclass 459.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as the one that does not include the first distribution mechanism.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

2. This application further contains claims directed to the following patentably distinct species of the claimed invention:

Hopper feed displacement mechanism:

Species 1; the embodiment of figure 2.

Species 2; the embodiment of figures 3a, 3b and 4.

Species 3; the embodiment of figures 3d and 3e.

Species 4; the embodiment of figures 3c and 6.

Species 5; the embodiment of figure 7.

Second compression mechanism:

Species 1; the embodiment of figure 9a.

Species 2; the embodiment of figure 9b.

Species 3; the embodiment of figure 9c.

Species 4; the embodiment of figure 9d.

Species 5; the embodiment of figure 9e.

Species 6; the embodiment of figure 9f.

Species 7; the embodiment of figure 11.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 19, 25 and 37 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. During a telephone conversation with Mr. Charles A. Lemaire on January 17, 2003 a provisional election was made with traverse to prosecute the invention of Group I and species of figure 3a & 9e, claims 1-8, 19-25, 27-35 and 37. Claim 36 is canceled. Affirmation of this election must be made by applicant in replying to this Office action. Claims 9-18, 25 and 26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

4. The disclosure is objected to because of the following informalities:

Same part with different reference numbers:

"primary compression mechanism 250" (page 13, lines 24-25) and "primary compression mechanism 130" (page 6, line 19).

"feed 96" (page 6, line 17) and "feed 98" (page 6, line 20).

Same reference number for different part:

"hopper 139 (page 2, lines 28) and "sloping wall 139 (page 6, line 18).

"chute 138" (page 15, line 5) and "hopper 138" (page 15, line 8).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is the claim limitation.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

✓ A person shall be entitled to a patent unless –

8. Claims 8, 19, 21, 22, 24, 27-35 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Rasmussen et al. (4,310,036).

Rasmussen et al. discloses an agricultural bagger apparatus comprising: a primary compression mechanism including shaft 52 and teeth 46; an input hopper 50 that receives agricultural feed, the hopper having a sloping wall 70 and lower end exit chute; a tunnel 32 and a means (secondary compression mechanism 82) for displacing

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pressure within the tunnel from above the primary compression mechanism to a higher portion of the tunnel interior.

The secondary compression mechanism including: the motorized pistons 88; hinged 83 apparatus on one side of the feed tunnel wall and connected to the piston arm 89, and the secondary compression mechanism compacts the feed above the primary compression mechanism by adding pressure to the feed.

Rasmussen et al. further discloses means 62 for: displacing pressure along the sloping wall toward the primary compression mechanism in order for the feed to easily fall through the hopper to the primary compression mechanism (column 3, lines 54-62); for sweeping the feed along the sloping wall in a cervical motion; for agitating the feed at a circumference of the cervical motion at a distance from the sloping wall; and for sweeping the feed along the sloping wall in a first and second separated cervical motion.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036).

As discussed above in paragraph 8 of this office action, Rasmussen et al. discloses the claimed invention, except for the secondary compression mechanism is located on the exterior of the feed tunnel and extending into the feed tunnel.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the secondary compression mechanism on the exterior of the feed tunnel and extending into the feed tunnel since the examiner takes Official Notice of the equivalence of the locations of the secondary compression mechanism (interior vs. exterior) for their use in the art and the selection of any of these known equivalents, to displace pressure from above the primary compression mechanism and toward an upper portion of the tunnel cavity, would be within the level of ordinary skill in the art.

11. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086).

As discussed above in paragraph 8 of this office action, Rasmussen et al. discloses the claimed invention, except that the first motor is coupled to the wall of the input hopper.

Goth discloses an apparatus comprising a motor 16 is coupling to a wall of a hopper to keep the material in motion by loosening and preventing the material from adhering to each other inside the hopper (column 1, lines 28-31 and lines 47-48).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Rasmussen et al. first distribution mechanism by applying the teaching from Goth to couple the motor, for driving the

distribution mechanism, to the sloping wall of the input hopper for loosening and keeping the material in motion before feeding to the primary compression mechanism.

The modified Rasmussen et al. further discloses: an elongated first bar 13 attached along its length to the first motor, and the first bar forms a non-parallel angle 14 relative to a radius of rotation of the first bar.

12. Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086).

As discussed above in paragraph 11 of this office action, the modified Rasmussen et al. discloses the claimed invention, except for a second motor coupled to the sloping wall of the input hopper.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to install a second motor coupled to the sloping wall of the input hopper, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Allowable Subject Matter

13. Claims 5-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

tkf
January 20, 2003

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal line extending to the right.

Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700